IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1269 of 2005.

The Secretary, Yashwantrao Chavan
Shikshan Prasarak Mandal & ors. .. Petitioners

versus

Babar Manohar Sonyabapu & ors. .. Respondents

...

Mr.A.G. Kothari for the petitioner.

Ms.Kumud Bhatia for the respondent no.2

CORAM : D.G. KARNIK,J.

DATED : 8th June 2005.

P.C.:

1. Rule.

2. Ms.Kumud Bhatia waives service on behalf of respondent no.1. Respondent nos.2 and 3 are formal parties and service of Rule on them is dispensed with. By consent, Rule is made returnable forthwith.

Heard learned counsel for the appearing parties.

3. The order passed by School Tribunal setting aside the oral termination of the services of the respondent no.1 with effect from 15th June 1995 as a teacher in the petitioner no.2 Night School, conducted by the petitioner no.1 Society is challenged in this petition.

4. The respondent no.1 was appointed as a teacher in the night school in June 1993 and his services were orally terminated on 15th June 1995 by not permitting him to perform his duties as an Asstt. Teacher nor permitting him to sign the muster roll. The respondent no.1 was also appointed as a teacher in the Junior College run by the petitioner no.1 society on 14th June 1993 and his services in the Junior College were terminated on 13th June 1997 on account of the closure of the Junior College. The respondent no.1 challenged both the terminations by filing an application before the School Tribunal. While the School Tribunal set aside the order of oral termination of respondent no.1 as Asstt. Teacher in the night school, it declined to set aside the order terminating services of the respondent no.1 in the

Junior College. That part of the order of the School Tribunal refusing the relief of reinstatement of the respondent no.1 in the Junior College has not been challenged by him and has attained finality.

5. The School Tribunal held that the respondent no.1 became permanent employee of the petitioners on completion of two years service in June 1995 and therefore his services could not have been terminated on 15th June 1995. Learned counsel for the petitioner contends that the respondent was not appointed in June 1993 as contended by him but was appointed on 1st September 1993 and therefore he had not completed two years of service and was not a permanent employee. Rules require the appointment of an assistant teacher to be in writing. However, the petitioner had not issued a written letter of appointment. No evidence was adduced by the petitioners that the respondent no.1 was appointed as an assistant teacher on 1st September 1993 and not in June 1993 as contended by him. Furthermore, in paragraph no.3 of the written statement, the petitioners have clearly admitted that the respondent no.1 was appointed in June 1993 as an Asstt. Teacher in the following words :

> "With reference to paragraph no,2, the respondent state that the appellant (i.e. respondent no.1 herein in this petition) was orally appointed in June 1993 as Asstt. Teacher in Gagangiri Night School of the academic year 1993 to 1994."

In view of the clear admission in the written statement that the respondent no.1 was appointed in June 1993, the School Tribunal was right in coming to the conclusion that respondent no.1 was appointed in June 1993 and therefore, had become a permanent assistant teacher in June 1995. In my view, the finding is a correct finding and in any event, the finding, which is of a fact, is a possible finding which cannot be interfered with in exercise of a writ jurisdiction.

6. The only question that is required to be considered is regarding the back wages. Though the service of the respondent no.1 were terminated on 15th June 1995, he did not approach the School Terminated till the year 1997. Secondly, during the period from 15th June 1995 to 13th June 1997, the respondent no.1 was also gainfully employed, though as a part timer, in the Junior College run by petitioner no.1 Society itself. He was paid salary

as a lecturer in the Junior College. In the circumstances, in my view, the direction to award back wages upto 13th June 1997 is too harsh and needs to be modified.

7. Hence, petition is partly allowed. The order of reinstatement of the respondent no.1 with continuity of service is maintained. However, the order of payment of the back wages is modified and the petitioners would pay back wages to the respondent no.1 only from 14th June 1997 till the date of reinstatement with continuity of service.

D.G. KARNIK, J